

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JULY 2, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2279

Introduced by Assembly Member Swanson

February 24, 2012

An act to amend Sections 41320.1 and 41326 of the Education Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2279, as amended, Swanson. School districts: emergency apportionments: trustees.

Existing law authorizes the governing board of a school district to request an emergency apportionment through the Superintendent of Public Instruction if the governing board of a school district determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations. Existing law provides that if a school district accepts an emergency apportionment the Superintendent shall, among other things, appoint a trustee who has recognized expertise in management and finance, and may employ, on a short-term basis, any staff necessary to assist the trustee. Existing law also provides that the trustee, and any necessary staff, shall serve until the emergency apportionment loan is repaid, the school district has adequate fiscal systems and controls in place, and the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable. Existing law authorizes the trustee, during the period of his or her service, to stay or rescind any action of

the local governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.

This bill would instead provide that the trustee, and necessary staff, shall serve until the school district has adequate fiscal systems and controls in place, the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable, and the Superintendent decides to terminate the trustee's appointment, but in no event, for less than 3 years. The bill would authorize the county superintendent of schools that has jurisdiction over the school district, after the trustee's period of service and until the loan is repaid, to stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district. The bill would require the county superintendent of schools to notify the Superintendent, as specified, within 5 business days of staying or rescinding an action of the governing board of the school district. If the Superintendent receives this notice from the county superintendent of schools, the bill would require the Superintendent to report to the Legislature, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.

Existing law authorizes the Superintendent, within 5 years after an appointed trustee is removed, to reassume, either directly or through an administrator, all of the legal rights, duties, and powers of the governing board of the school district if the school district violates any provision of specified recovery plans approved by the Superintendent.

This bill would instead authorize the Superintendent, within 5 years after an appointed trustee is removed or the ~~loan~~ *emergency apportionment* is repaid, whichever occurs later, to reassume, either directly or through an administrator, all of the legal rights, duties, and powers of the governing board of the school district if the school district violates any provision of specified recovery plans approved by the Superintendent.

This bill would also make numerous nonsubstantive changes.

This bill would incorporate additional changes in Section 41326 of the Education Code, proposed by AB 2278, to be operative only if AB 2278 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 41320.1 of the Education Code is
2 amended to read:

3 41320.1. Acceptance by the school district of the
4 apportionments made pursuant to Section 41320 constitutes the
5 agreement by the school district to all of the following conditions:

6 (a) The Superintendent shall appoint a trustee who has
7 recognized expertise in management and finance and may employ,
8 on a short-term basis, staff necessary to assist the trustee, including,
9 but not limited to, certified public accountants, as follows:

10 (1) The expenses incurred by the trustee and necessary staff
11 shall be borne by the school district.

12 (2) The Superintendent shall establish the terms and conditions
13 of the employment, including the remuneration of the trustee. The
14 trustee shall serve at the pleasure of, and report directly to, the
15 Superintendent.

16 (3) The trustee, and necessary staff, shall serve until the school
17 district has adequate fiscal systems and controls in place, the
18 Superintendent has determined that the school district's future
19 compliance with the fiscal plan approved for the school district
20 under Section 41320 is probable, and the Superintendent decides
21 to terminate the trustee's appointment, but in no event, for less
22 than three years. The Superintendent shall notify the county
23 superintendent of schools, the Legislature, the Department of
24 Finance, and the Controller no less than 60 days before the time
25 that the Superintendent expects these conditions to be met.

26 (4) Before the school district repays the loan, including interest,
27 the recipient of the loan shall select an auditor from a list
28 established by the Superintendent and the Controller to conduct
29 an audit of its fiscal systems. If the fiscal systems are deemed to
30 be inadequate, the Superintendent may retain the trustee until the
31 deficiencies are corrected. The cost of this audit and any additional
32 cost of the trustee shall be borne by the school district.

33 (5) Notwithstanding any other law, all reports submitted to the
34 trustee are public records.

35 (6) To facilitate the appointment of the trustee and the
36 employment of necessary staff, for purposes of this section, the
37 Superintendent is exempt from the requirements of Article 6
38 (commencing with Section 999) of Chapter 6 of Division 4 of the

1 Military and Veterans Code and Part 2 (commencing with Section
2 10100) of Division 2 of the Public Contract Code.

3 (7) Notwithstanding any other law, the Superintendent may
4 appoint an employee of the department to act as trustee for up to
5 the duration of the trusteeship. The salary and benefits of that
6 employee shall be established by the Superintendent and paid by
7 the school district. During the time of appointment, the employee
8 is an employee of the school district, but shall remain in the same
9 retirement system under the same plan as if the employee had
10 remained in the department. Upon the expiration or termination
11 of the appointment, the employee shall have the right to return to
12 his or her former position, or to a position at substantially the same
13 level as that position, with the department. The time served in the
14 appointment shall be counted for all purposes as if the employee
15 had served that time in his or her former position with the
16 department.

17 (b) (1) The trustee appointed by the Superintendent shall
18 monitor and review the operation of the school district. During the
19 period of his or her service, the trustee may stay or rescind an
20 action of the governing board of the school district that, in the
21 judgment of the trustee, may affect the financial condition of the
22 school district.

23 (2) After the trustee's period of service, and until the loan is
24 repaid, the county superintendent of schools that has jurisdiction
25 over the school district may stay or rescind an action of the
26 governing board of the school district that, in his or her judgment,
27 may affect the financial condition of the school district. The county
28 superintendent of schools shall notify the Superintendent, within
29 five business days, if he or she stays or rescinds an action of the
30 governing board of the school district. The notice shall include,
31 but not be limited to, both of the following:

32 (A) A description of the governing board of the school district's
33 intended action and its financial implications.

34 (B) The rationale and findings that support the county
35 superintendent of school's decision to stay or rescind the action
36 of the governing board of the school district.

37 (3) If the Superintendent is notified by the county superintendent
38 of schools pursuant to paragraph (2), the Superintendent shall
39 report to the Legislature, on or before December 30 of every year,

1 whether the school district is complying with the fiscal plan
2 approved for the school district.

3 (4) The Superintendent may establish timelines and prescribe
4 formats for reports and other materials to be used by the trustee to
5 monitor and review the operations of the school district. The trustee
6 shall approve or reject all reports and other materials required from
7 the school district as a condition of receiving the apportionment.
8 The Superintendent, upon the recommendation of the trustee, may
9 reduce an apportionment to the school district in an amount up to
10 two hundred dollars (\$200) per day for each late or unacceptable
11 report or other material required under this part, and shall report
12 to the Legislature a failure of the school district to comply with
13 the requirements of this section. If the Superintendent determines,
14 at any time, that the fiscal plan approved for the school district
15 under Section 41320 is unsatisfactory, he or she may modify the
16 plan as necessary, and the school district shall comply with the
17 plan as modified.

18 (c) At the request of the Superintendent, the Controller shall
19 transfer to the department, from an apportionment to which the
20 school district would otherwise have been entitled pursuant to
21 Section 42238, the amount necessary to pay the expenses incurred
22 by the trustee and associated costs incurred by the county
23 superintendent of schools.

24 (d) For the fiscal year in which the apportionments are disbursed
25 and every year thereafter, the Controller, or his or her designee,
26 shall cause an audit to be conducted of the books and accounts of
27 the school district, in lieu of the audit required by Section 41020.
28 At the Controller's discretion, the audit may be conducted by the
29 Controller, his or her designee, or an auditor selected by the school
30 district and approved by the Controller. The costs of these audits
31 shall be borne by the school district. These audits shall be required
32 until the Controller determines, in consultation with the
33 Superintendent, that the school district is financially solvent, but
34 in no event earlier than one year following the implementation of
35 the plan or later than the time the apportionment made is repaid,
36 including interest. In addition, the Controller shall conduct quality
37 control reviews pursuant to subdivision (c) of Section 14504.2.

38 (e) For purposes of errors and omissions liability insurance
39 policies, the trustee appointed pursuant to this section is an
40 employee of the local educational agency to which he or she is

1 assigned. For purposes of workers' compensation benefits, the
2 trustee is an employee of the local educational agency to which
3 he or she is assigned, except that a trustee appointed pursuant to
4 paragraph (7) of subdivision (a) is an employee of the department
5 for that purpose.

6 (f) Except for an individual appointed by the Superintendent as
7 trustee pursuant to paragraph (7) of subdivision (a), the
8 state-appointed trustee is a member of the State Teachers'
9 Retirement System, if qualified, for the period of service as trustee,
10 unless the trustee elects in writing not to become a member. A
11 person who is a member or retirant of the State Teachers'
12 Retirement System at the time of appointment shall continue to
13 be a member or retirant of the system for the duration of the
14 appointment. If the trustee chooses to become a member or is
15 already a member, the trustee shall be placed on the payroll of the
16 school district for purposes of providing appropriate contributions
17 to the system. The Superintendent may also require that an
18 individual appointed as trustee pursuant to paragraph (7) of
19 subdivision (a) be placed on the payroll of the school district for
20 purposes of remuneration, other benefits, and payroll deductions.
21 For purposes of workers' compensation benefits, the
22 state-appointed trustee is deemed an employee of the local
23 educational agency to which he or she is assigned, except that a
24 trustee who is appointed pursuant to paragraph (7) of subdivision
25 (a) is an employee of the department for that purpose.

26 SEC. 2. Section 41326 of the Education Code is amended to
27 read:

28 41326. (a) Notwithstanding any other provision of this code,
29 the acceptance by a school district of an apportionment made
30 pursuant to Section 41320 that exceeds an amount equal to 200
31 percent of the amount of the reserve recommended for that school
32 district under the standards and criteria adopted pursuant to Section
33 33127 constitutes the agreement by the school district to the
34 conditions set forth in this article. Before applying for an
35 emergency apportionment in the amount identified in this
36 subdivision, the governing board of a school district shall discuss
37 the need for that apportionment at a regular or special meeting of
38 the governing board of the school district and, at that meeting,
39 shall receive testimony regarding the apportionment from parents,
40 exclusive representatives of employees of the school district, and

1 other members of the community. For purposes of this article,
2 “qualifying school district” means a school district that accepts a
3 loan as described in this subdivision.

4 (b) The Superintendent shall assume all the legal rights, duties,
5 and powers of the governing board of a qualifying school district.
6 The Superintendent, in consultation with the county superintendent
7 of schools, shall appoint an administrator to act on his or her behalf
8 in exercising the authority described in this subdivision in
9 accordance with all of the following:

10 (1) The administrator shall serve under the direction and
11 supervision of the Superintendent until terminated by the
12 Superintendent at his or her discretion. The Superintendent shall
13 consult with the county superintendent of schools before
14 terminating the administrator.

15 (2) The administrator shall have recognized expertise in
16 management and finance.

17 (3) To facilitate the appointment of the administrator and the
18 employment of necessary staff, for purposes of this section, the
19 Superintendent is exempt from the requirements of Article 6
20 (commencing with Section 999) of Chapter 6 of Division 4 of the
21 Military and Veterans Code and Part 2 (commencing with Section
22 10100) of Division 2 of the Public Contract Code.

23 (4) Notwithstanding any other law, the Superintendent may
24 appoint an employee of the state or the office of the county
25 superintendent of schools to act as administrator for up to the
26 duration of the administratorship. During the tenure of his or her
27 appointment, the administrator, if he or she is an employee of the
28 state or the office of the county superintendent of schools, is an
29 employee of the school district, but shall remain in the same
30 retirement system under the same plan that has been provided by
31 his or her employment with the state or the office of the county
32 superintendent of schools. Upon the expiration or termination of
33 the appointment, the employee shall have the right to return to his
34 or her former position, or to a position at substantially the same
35 level as that position, with the state or the office of the county
36 superintendent of schools. The time served in the appointment
37 shall be counted for all purposes as if the administrator had served
38 that time in his or her former position with the state or the office
39 of the county superintendent of schools.

(5) Except for an individual appointed as an administrator by the Superintendent pursuant to paragraph (4), the administrator shall be a member of the State Teachers' Retirement System, if qualified, for the period of service as administrator, unless he or she elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the administrator chooses to become a member or is already a member, the administrator shall be placed on the payroll of the school district for purposes of providing appropriate contributions to the system. The Superintendent may also require the administrator to be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions.

(6) For purposes of workers' compensation benefits, the administrator is an employee of the qualifying school district, except that an administrator appointed pursuant to paragraph (4) may be deemed an employee of the state or office of the county superintendent of schools, as applicable.

(7) The qualifying school district shall add the administrator as a covered employee of the school district for all purposes of errors and omissions liability insurance policies.

(8) The salary and benefits of the administrator shall be established by the Superintendent and paid by the qualifying school district.

(9) The Superintendent or the administrator may, on a short-term basis, employ, at *the expense of the school district* ~~expense~~, any staff necessary to assist the administrator, including, but not limited to, a certified public accountant.

(10) The administrator may do all of the following:

(A) Implement substantial changes in the fiscal policies and practices of the school district, including, if necessary, the filing of a petition under Chapter 9 (commencing with Section 901) of Title 11 of the United States Code for the adjustment of indebtedness.

(B) Revise the educational program of the school district to reflect realistic income projections and pupil performance relative to state standards.

1 (C) Encourage all members of the school community to accept
2 a fair share of the burden of the fiscal recovery of the school
3 district.

4 (D) Consult, for *the* purposes described in this subdivision, with
5 the governing board of the school district, the exclusive
6 representatives of the employees of the school district, parents,
7 and the community.

8 (E) Consult with, and seek recommendations from, the
9 Superintendent, county superintendent of schools, and the County
10 Office Fiscal Crisis and Management Assistance Team authorized
11 pursuant to subdivision (c) of Section 42127.8 for *the* purposes
12 described in this article.

13 (F) With the approval of the Superintendent, enter into
14 agreements on behalf of the school district and, subject to any
15 contractual obligation of the school district, change existing school
16 district rules, regulations, policies, or practices as necessary for
17 the effective implementation of the recovery plans referred to in
18 Sections 41327 and 41327.1.

19 (c) (1) For the period of time during which the Superintendent
20 exercises the authority described in subdivision (b), the governing
21 board of the qualifying school district shall serve as an advisory
22 body reporting to the state-appointed administrator, and has no
23 rights, duties, or powers, and is not entitled to any stipend, benefits,
24 or other compensation from the school district.

25 (2) Upon the appointment of an administrator pursuant to this
26 section, the district superintendent of schools is no longer an
27 employee of the school district.

28 (3) A determination of the severance compensation for the
29 district superintendent of schools shall be made pursuant to
30 subdivision (j).

31 (d) Notwithstanding Section 35031 or any other law, the
32 administrator may, after according the employee reasonable notice
33 and the opportunity for a hearing, terminate the employment of
34 ~~any~~ a deputy, associate, assistant superintendent of schools, or ~~any~~
35 other school district level administrator who is employed by a
36 school district under a contract of employment signed or renewed
37 after January 1, 1992, if the employee fails to document, to the
38 satisfaction of the administrator, that before the date of the
39 acceptance of the *emergency* apportionment he or she either advised
40 the governing board of the school district, or his or her superior,

1 that actions contemplated or taken by the governing board of the
2 school district could result in the fiscal insolvency of the school
3 district, or took other appropriate action to avert that fiscal
4 insolvency.

5 (e) The authority of the Superintendent, and the administrator,
6 under this section shall continue until all of the following occur:

7 (1) (A) After one complete fiscal year has elapsed following
8 the school district's acceptance of ~~a loan~~ *an emergency*
9 *apportionment* as described in subdivision (a), the administrator
10 determines, and so notifies the Superintendent and the county
11 superintendent of schools, that future compliance by the school
12 district with the recovery plans approved pursuant to paragraph
13 (2) is probable.

14 (B) The Superintendent may return power to the governing
15 board of the school district for ~~any~~ *an* area listed in subdivision
16 (a) of Section 41327.1 if performance under the recovery plan for
17 that area has been demonstrated to the satisfaction of the
18 Superintendent.

19 (2) The Superintendent has approved all of the recovery plans
20 referred to in subdivision (a) of Section 41327 and the County
21 Office Fiscal Crisis and Management Assistance Team completes
22 the improvement plans specified in Section 41327.1 and has
23 completed a minimum of two reports identifying the school
24 district's progress in implementing the improvement plans.

25 (3) The administrator certifies that all necessary collective
26 bargaining agreements have been negotiated and ratified, and that
27 the agreements are consistent with the terms of the recovery plans.

28 (4) The school district has completed all reports required by the
29 Superintendent and the administrator.

30 (5) The Superintendent determines that future compliance by
31 the school district with the recovery plans approved pursuant to
32 paragraph (2) is probable.

33 (f) When the conditions stated in subdivision (e) have been met,
34 and at least 60 days after the Superintendent has notified the
35 Legislature, the Department of Finance, the Controller, and the
36 county superintendent of schools that he or she expects the
37 conditions prescribed pursuant to this section to be met, the
38 governing board of the school district shall regain all of its legal
39 rights, duties, and powers, except for the powers held by the trustee
40 provided for pursuant to Article 2 (commencing with Section

1 41320). The Superintendent shall appoint a trustee under Section
2 41320.1 to monitor and review the operations of the school district
3 until the conditions of subdivision (b) of that section have been
4 met.

5 (g) Notwithstanding subdivision (f), if the school district violates
6 a provision of the recovery plans approved by the Superintendent
7 pursuant to this article within five years after the trustee appointed
8 pursuant to Section 41320.1 is removed or after the ~~loan~~ emergency
9 *apportionment* is repaid, whichever occurs later, the Superintendent
10 may reassume, either directly or through an administrator appointed
11 in accordance with this section, all of the legal rights, duties, and
12 powers of the governing board of the school district. The
13 Superintendent shall return to the governing board of the school
14 district all of its legal rights, duties, and powers reassumed under
15 this subdivision when he or she determines that future compliance
16 with the approved recovery plans is probable, or after a period of
17 one year, whichever occurs later.

18 (h) Article 2 (commencing with Section 41320) shall apply
19 except as otherwise specified in this article.

20 (i) It is the intent of the Legislature that the legislative budget
21 subcommittees annually conduct a review of each qualifying school
22 district that includes an evaluation of the financial condition of the
23 school district, the impact of the recovery plans upon the school
24 district's educational program, and the efforts made by the
25 state-appointed administrator to obtain input from the community
26 and the governing board of the school district.

27 (j) (1) The district superintendent of schools is entitled to a due
28 process hearing for purposes of determining final compensation.
29 The final compensation of the district superintendent of schools
30 shall be between zero and six times his or her monthly salary. The
31 outcome of the due process hearing shall be reported to the
32 Superintendent and the public. The information provided to the
33 public shall explain the rationale for the compensation.

34 (2) This subdivision applies only to a contract for employment
35 negotiated on or after June 21, 2004.

36 (k) (1) When the Superintendent assumes control over a school
37 district pursuant to subdivision (b), he or she shall, in consultation
38 with the County Office Fiscal Crisis and Management Assistance
39 Team, review the fiscal oversight of the school district by the
40 county superintendent of schools. The Superintendent may consult

1 with other fiscal experts, including other county superintendents
2 of schools and regional fiscal teams, in conducting this review.

3 (2) Within three months of assuming control over a qualifying
4 school district, the Superintendent shall report his or her findings
5 to the Legislature and shall provide a copy of that report to the
6 Department of Finance. This report shall include findings as to
7 fiscal oversight actions that were or were not taken and may include
8 recommendations as to an appropriate legislative response to
9 improve fiscal oversight.

10 (3) If, after performing the duties described in paragraphs (1)
11 and (2), the Superintendent determines that the county
12 superintendent of schools failed to carry out his or her
13 responsibilities for fiscal oversight as required by this code, the
14 Superintendent may exercise the authority of the county
15 superintendent of schools who has oversight responsibilities for a
16 qualifying school district. If the Superintendent finds, based on
17 the report required—by *in* paragraph (2), that the county
18 superintendent of schools failed to appropriately take into account
19 particular types of indicators of financial distress, or failed to take
20 appropriate remedial actions in the qualifying school district, the
21 Superintendent shall further investigate whether the county
22 superintendent of schools failed to take into account those
23 indicators, or similarly failed to take appropriate actions in other
24 school districts with negative or qualified certifications, and shall
25 provide an additional report on the fiscal oversight practices of the
26 county superintendent of schools to the appropriate policy and
27 fiscal committees of each house of the Legislature and the
28 Department of Finance.

29 *SEC. 2.5. Section 41326 of the Education Code is amended to*
30 *read:*

31 41326. (a) Notwithstanding any other provision of this code,
32 the acceptance by a school district of an apportionment made
33 pursuant to Section 41320 that exceeds an amount equal to 200
34 percent of the amount of the reserve recommended for that *school*
35 district under the standards and criteria adopted pursuant to Section
36 33127 constitutes the agreement by the *school* district to the
37 conditions set forth in this article. ~~Prior to~~ *Before* applying for an
38 emergency apportionment in the amount identified in this
39 subdivision, a ~~school district~~ governing board *of a school district*
40 shall discuss the need for that apportionment at a regular or special

1 meeting of the governing board *of the school district* and, at that
2 meeting, shall receive testimony regarding the apportionment from
3 parents, exclusive representatives of employees of the *school*
4 district, and other members of the community. For purposes of
5 this article, “qualifying school district” means a school district that
6 accepts a loan as described in this subdivision.

7 (b) The Superintendent shall assume all the legal rights, duties,
8 and powers of the governing board of a qualifying school district.
9 The Superintendent, in consultation with the county superintendent
10 of schools, shall appoint an administrator to act on his or her behalf
11 in exercising the authority described in this subdivision in
12 accordance with all of the following:

13 (1) The administrator shall serve under the direction and
14 supervision of the Superintendent until terminated by the
15 Superintendent at his or her discretion. The Superintendent shall
16 consult with the county superintendent of schools before
17 terminating the administrator.

18 (2) The administrator shall have recognized expertise in
19 management and finance.

20 (3) To facilitate the appointment of the administrator and the
21 employment of ~~any necessary staff, for the purposes of this section,~~
22 ~~the Superintendent of Public Instruction~~ is exempt from the
23 requirements of Article 6 (commencing with Section 999) of
24 Chapter 6 of Division 4 of the Military and Veterans Code and
25 Part 2 (commencing with Section 10100) of Division 2 of the
26 Public Contract Code.

27 (4) Notwithstanding any other law, the Superintendent may
28 appoint an employee of the state or the office of the county
29 superintendent of schools to act as administrator for up to the
30 duration of the administratorship. During the tenure of his or her
31 appointment, the administrator, if he or she is an employee of the
32 state or the office of the county superintendent of schools, is an
33 employee of the *qualifying* school district, but shall remain in the
34 same retirement system under the same plan that has been provided
35 by his or her employment with the state or the office of the county
36 superintendent of schools. Upon the expiration or termination of
37 the appointment, the employee shall have the right to return to his
38 or her former position, or to a position at substantially the same
39 level as that position, with the state or the office of the county
40 superintendent of schools. The time served in the appointment

1 shall be counted for all purposes as if the administrator had served
2 that time in his or her former position with the state or the office
3 of the county superintendent of schools.

4 (5) Except for an individual appointed as an administrator by
5 the Superintendent of ~~Public Instruction~~ pursuant to paragraph (4),
6 the administrator shall be a member of the State Teachers'
7 Retirement System, if qualified, for the period of service as
8 administrator, unless he or she elects in writing not to become a
9 member. A person who is a member or retirant of the State
10 Teachers' Retirement System at the time of appointment shall
11 continue to be a member or retirant of the system for the duration
12 of the appointment. If the administrator chooses to become a
13 member or is already a member, the administrator shall be placed
14 on the payroll of the *qualifying* school district for the purposes of
15 providing appropriate contributions to the system. The
16 Superintendent may also require the administrator to be placed on
17 the payroll of the *qualifying* school district for purposes of
18 remuneration, other benefits, and payroll deductions.

19 (6) For the purposes of workers' compensation benefits, the
20 administrator is an employee of the *qualifying school* district,
21 except that an administrator appointed pursuant to paragraph (4)
22 may be deemed an employee of the state or office of the county
23 superintendent of schools, as applicable.

24 (7) The *qualifying school* district shall add the administrator as
25 a covered employee of the *qualifying* school district for all purposes
26 of errors and omissions liability insurance policies.

27 (8) The salary and benefits of the administrator shall be
28 established by the Superintendent of ~~Public Instruction~~ and paid
29 by the *qualifying* school district.

30 (9) The Superintendent or the administrator may, on a short-term
31 basis, employ, at ~~district~~ *the expense of the qualifying school*
32 *district*, any staff necessary to assist the administrator, including,
33 but not limited to, a certified public accountant.

34 (10) The administrator may do all of the following:

35 (A) Implement substantial changes in the fiscal policies and
36 practices of the *qualifying school* district, including, if necessary,
37 the filing of a petition under Chapter 9 (commencing with Section
38 901) of Title 11 of the United States Code for the adjustment of
39 indebtedness.

1 (B) Revise the educational program of the *qualifying school*
2 district to reflect realistic income projections and pupil performance
3 relative to state standards.

4 (C) Encourage all members of the school community to accept
5 a fair share of the burden of the fiscal recovery of the *qualifying*
6 *school* district.

7 (D) Consult, for the purposes described in this subdivision, with
8 the governing board of the *qualifying* school district, the exclusive
9 representatives of the employees of the *qualifying school* district,
10 parents, and the community.

11 (E) Consult with, and seek recommendations from, the
12 Superintendent, *the* county superintendent of schools, and the
13 County Office Fiscal Crisis and Management Assistance Team
14 authorized pursuant to subdivision (c) of Section 42127.8 for the
15 purposes described in this article.

16 (F) With the approval of the Superintendent, enter into
17 agreements on behalf of the *qualifying school* district and, subject
18 to any contractual obligation of the *qualifying school* district,
19 change ~~any~~ existing *school* district rules, regulations, policies, or
20 practices as necessary for the effective implementation of the
21 recovery plans referred to in Sections 41327 and 41327.1.

22 (c) (1) ~~For~~ *Except as provided in paragraph (2), for the period*
23 *of time during which the Superintendent of Public Instruction*
24 *exercises the authority described in subdivision (b), the governing*
25 *board of the qualifying school district shall serve as an advisory*
26 *body reporting to the state-appointed administrator, and has no*
27 *rights, duties, or powers, and is not entitled to any stipend, benefits,*
28 *or other compensation from the qualifying school district.*

29 (2) (A) *After one complete fiscal year has elapsed following*
30 *the qualifying school district's acceptance of an emergency*
31 *apportionment, the governing board of the qualifying school*
32 *district may conduct an annual advisory evaluation of an*
33 *administrator for the duration of the administratorship.*

34 (B) *An advisory evaluation of an administrator shall focus on*
35 *the administrator's effectiveness in leading the school district*
36 *toward fiscal recovery and improved academic achievement.*
37 *Advisory evaluation criteria shall be agreed upon by the governing*
38 *board of the qualifying school district and the administrator before*
39 *the advisory evaluation. The advisory evaluation shall include,*
40 *but not be limited to, all of the following:*

1 (i) *Goals and standards consistent with Section 41327.1.*

2 (ii) *Commendations in the areas of the administrator's strengths*
3 *and achievements.*

4 (iii) *Recommendations for improving the administrator's*
5 *effectiveness in areas of concern and unsatisfactory performance.*

6 (C) *An advisory evaluation of an administrator conducted by*
7 *the governing board of a qualifying school district shall be*
8 *submitted to the Governor, the Legislature, the Superintendent,*
9 *and the County Office Fiscal Crisis and Management Assistance*
10 *Team.*

11 (2)

12 (3) Upon the appointment of an administrator pursuant to this
13 section, the district superintendent of schools is no longer an
14 employee of the *qualifying school* district.

15 (3)

16 (4) A determination of the severance compensation for the
17 district superintendent *of schools* shall be made pursuant to
18 subdivision (j).

19 (d) Notwithstanding Section 35031 or any other law, the
20 administrator may, after according the employee reasonable notice
21 and the opportunity for a hearing, terminate the employment of
22 ~~any~~ a deputy, associate, assistant superintendent of schools, or ~~any~~
23 other *school* district level administrator who is employed by a
24 *qualifying school* district under a contract of employment signed
25 or renewed after January 1, 1992, if the employee fails to
26 document, to the satisfaction of the administrator, that ~~prior to~~
27 *before* the date of the acceptance of the *emergency* apportionment
28 he or she either advised the governing board of the *qualifying*
29 *school* district, or his or her superior, that actions contemplated or
30 taken by the governing board *of the qualifying school district* could
31 result in the fiscal insolvency of the *qualifying school* district, or
32 took other appropriate action to avert that fiscal insolvency.

33 (e) The authority of the Superintendent, and the administrator,
34 under this section shall continue until all of the following occur:

35 (1) (A) After one complete fiscal year has elapsed following
36 the *qualifying school* district's acceptance of ~~a loan~~ an *emergency*
37 *apportionment* as described in subdivision (a), the administrator
38 determines, and so notifies the Superintendent and the county
39 superintendent of schools, that future compliance by the *qualifying*

1 school district with the recovery plans approved pursuant to
2 paragraph (2) is probable.

3 (B) The Superintendent may return power to the governing
4 board of a *qualifying school district* for ~~any~~ an area listed in
5 subdivision (a) of Section 41327.1 if performance under the
6 recovery plan for that area has been demonstrated to the satisfaction
7 of the Superintendent.

8 (2) The Superintendent has approved all of the recovery plans
9 referred to in subdivision (a) of Section 41327 and the County
10 Office Fiscal Crisis and Management Assistance Team completes
11 the improvement plans specified in Section 41327.1 and has
12 completed a minimum of two reports identifying the *qualifying*
13 *school* district's progress in implementing the improvement plans.

14 (3) The administrator certifies that all necessary collective
15 bargaining agreements have been negotiated and ratified, and that
16 the agreements are consistent with the terms of the recovery plans.

17 (4) The *qualifying school* district has completed all reports
18 required by the Superintendent and the administrator.

19 (5) The Superintendent determines that future compliance by
20 the *qualifying school* district with the recovery plans approved
21 pursuant to paragraph (2) is probable.

22 (f) When the conditions stated in subdivision (e) have been met,
23 and at least 60 days after the Superintendent of Public Instruction
24 has notified the Legislature, the Department of Finance, the
25 Controller, and the county superintendent of schools that he or she
26 expects the conditions prescribed pursuant to this section to be
27 met, the ~~school district~~ governing board of the *qualifying school*
28 *district* shall regain all of its legal rights, duties, and powers, except
29 for the powers held by the trustee provided for pursuant to Article
30 2 (commencing with Section 41320). The Superintendent shall
31 appoint a trustee under Section 41320.1 to monitor and review the
32 operations of the *qualifying school* district until the conditions of
33 subdivision (b) of that section have been met.

34 (g) Notwithstanding subdivision (f), if the *qualifying school*
35 district violates ~~any~~ a provision of the recovery plans approved by
36 the Superintendent pursuant to this article within five years after
37 the trustee appointed pursuant to Section 41320.1 is ~~removed~~, the
38 *removed or after the emergency apportionment is repaid,*
39 *whichever occurs later,* the Superintendent may reassume, either
40 directly or through an administrator appointed in accordance with

1 this section, all of the legal rights, duties, and powers of the
2 governing board of the *qualifying school* district. The
3 Superintendent shall return to the ~~school district~~ governing board
4 ~~of the qualifying school district~~ all of its legal rights, duties, and
5 powers reassumed under this subdivision when he or she
6 determines that future compliance with the approved recovery
7 plans is probable, or after a period of one year, whichever occurs
8 later.

9 (h) Article 2 (commencing with Section 41320) shall apply
10 except as otherwise specified in this article.

11 (i) It is the intent of the Legislature that the legislative budget
12 subcommittees annually conduct a review of each qualifying school
13 district that includes an evaluation of the financial condition of the
14 *qualifying school* district, the impact of the recovery plans upon
15 the *qualifying school* district's educational program, and the efforts
16 made by the state-appointed administrator to obtain input from the
17 community and the governing board of the *qualifying school*
18 district.

19 (j) (1) The district superintendent *of schools* is entitled to a due
20 process hearing for purposes of determining final compensation.
21 The final compensation of the district superintendent *of schools*
22 shall be between zero and six times his or her monthly salary. The
23 outcome of the due process hearing shall be reported to the
24 Superintendent ~~of Public Instruction~~ and the public. The
25 information provided to the public shall explain the rationale for
26 the compensation.

27 (2) This subdivision applies only to a contract for employment
28 negotiated on or after June 21, 2004.

29 (k) (1) When the Superintendent assumes control over a school
30 district pursuant to subdivision (b), he or she shall, in consultation
31 with the County Office Fiscal Crisis and Management Assistance
32 Team, review the fiscal oversight of the *qualifying school* district
33 by the county superintendent of schools. The Superintendent may
34 consult with other fiscal experts, including other county
35 superintendents of schools and regional fiscal teams, in conducting
36 this review.

37 (2) Within three months of assuming control over a qualifying
38 *school* district, the Superintendent shall report his or her findings
39 to the Legislature and shall provide a copy of that report to the
40 Department of Finance. This report shall include findings as to

1 fiscal oversight actions that were or were not taken and may include
2 recommendations as to an appropriate legislative response to
3 improve fiscal oversight.

4 (3) If, after performing the duties described in paragraphs (1)
5 and (2), the Superintendent determines that the county
6 superintendent of schools failed to carry out his or her
7 responsibilities for fiscal oversight as required by this code, the
8 Superintendent may exercise the authority of the county
9 superintendent of schools who has oversight responsibilities for a
10 qualifying school district. If the Superintendent finds, based on
11 the report required in paragraph (2), that the county superintendent
12 of schools failed to appropriately take into account particular types
13 of indicators of financial distress, or failed to take appropriate
14 remedial actions in the qualifying *school* district, the
15 Superintendent shall further investigate whether the county
16 superintendent of schools failed to take into account those
17 indicators, or similarly failed to take appropriate actions in other
18 *school* districts with negative or qualified certifications, and shall
19 provide an additional report on the fiscal oversight practices of the
20 county superintendent *of schools* to the appropriate policy and
21 fiscal committees of each house of the Legislature and the
22 Department of Finance.

23 *SEC. 3. Section 2.5 of this bill incorporates amendments to*
24 *Section 41326 of the Education Code proposed by both this bill*
25 *and Assembly Bill 2278. It shall only become operative if (1) both*
26 *bills are enacted and become effective on or before January 1,*
27 *2013, (2) each bill amends Section 41326 of the Education Code,*
28 *and (3) this bill is enacted after Assembly Bill 2278, in which case*
29 *Section 2 of this bill shall not become operative.*